

1 7 and 8. Where are they, Adam?

2 MR. BROWN: It's a poll book page
3 and the application.

4 MR. CHAIRMAN: Mr. Brown.

5 MR. BROWN: Thank you,
6 Mr. Chairman and members of the Commission.

7 As we've seen earlier in a precinct in
8 Vanderburgh, this is another early vote --
9 absentee walk-in application that was not
10 signed. We would just ask for consistency in
11 invalidating this ballot. That's Exhibit
12 Number 7. And then the poll book page where
13 the person did not sign in on Election Day or
14 provide any other proof is -- is also
15 attached as Exhibit Number 8. So as before,
16 we feel there is a requirement to sign the
17 application. As was established, there's no
18 procedure in Vanderburgh County that would
19 show this person presented a valid ID.
20 Again, we would ask for consistency and ask
21 that the Commission vote to remove this
22 ballot. Thank you.

23 MR. CHAIRMAN: Counsel.

24 MR. BROOKS: Well, we would
25 incorporate our arguments as before with

1 respect to this, and that is in particular,
2 the -- the procedure for challenging an
3 absentee ballot is when -- an application is
4 when the absentee ballot comes in, and that
5 is what the statutory provision is for. I'm
6 at a loss as to what the statutory provision
7 is for if -- if it says if you file an
8 absentee application -- application for
9 absentee ballot and it says the process for
10 challenging is for somebody to fill out an
11 affidavit and then even further under the
12 statute to require a vote of the local board
13 in order to reject an application. The --
14 the -- it seems to me that the interpretation
15 that you can fail to use that process, send
16 somebody a ballot and then after the
17 election, say, oh, we shouldn't have sent you
18 a ballot, what meaning is left for the
19 process to challenge an absentee application?
20 It seems to me that by saying you can do
21 that, you might as well just write off that
22 entire section. I don't know what meaning is
23 left to the section if you -- if you don't
24 follow that procedure. I mean, if you think
25 about it, it just --

1 MR. CHAIRMAN: Not every race
2 is --

3 MR. BROOKS: Pardon?

4 MR. CHAIRMAN: Not every race is
5 recounted, though.

6 MR. BROOKS: Pardon?

7 MR. CHAIRMAN: Not every race is
8 counted, though.

9 MR. BROOKS: Erase?

10 MR. CHAIRMAN: Not every race --

11 MR. BROOKS' CO-COUNSEL: Is
12 recounted.

13 MR. CHAIRMAN: Not every race is
14 recounted.

15 MR. BROOKS: Well, I understand,
16 but that -- but -- but I don't understand --
17 if -- if the exclusive challenge to -- I
18 mean, you're -- we're supposed to be counting
19 ballots and not -- only not counting them if
20 there's some -- very few exceptions, if you
21 can tell the voter's intent, which is section
22 one. The voter's intent is obvious on the --
23 on the ballot themselves when they come back.
24 That's their voter intent. And there's not
25 an exception to that, number 1, 12- --

1 3-12-1-1. There's not an exception to the
2 vote -- looking to the voter's intent for
3 failure to sign a registration, so -- so
4 you --

5 MR. CHAIRMAN: How do you --

6 MR. BROOKS: -- there's not an
7 exception.

8 MR. CHAIRMAN: How do you know
9 from the argument you're making or from the
10 evidence presented -- and maybe you'll get to
11 this --

12 MR. BROOKS: Pardon?

13 MR. CHAIRMAN: -- or maybe you'll
14 get to this -- that a real person even
15 appeared?

16 MR. BROOKS: Well, because of the
17 -- the testimony that you have from the clerk
18 that here's their process and here's what
19 they do. They check the voter ID's. They --
20 they go through the whole process that
21 they're supposed to.

22 MR. CHAIRMAN: In this particular
23 case --

24 MR. BROOKS: This person --

25 MR. CHAIRMAN: -- with this

1 ballot -- I'll let you finish up and then
2 I'm --

3 MR. BROOKS: Okay.

4 MR. CHAIRMAN: -- going to have
5 some questions.

6 MR. BROOKS: Yeah. I mean, this
7 -- well, okay. Let me make -- oh. I was
8 going to say, the logical extension of this
9 is that now -- if -- if some clerk or a
10 clerk's employee, every time a -- if a
11 Republican comes -- if you have a Republican
12 clerk and a Republican employee and every
13 time they see a Democrat come in they say
14 let's not hand them this thing, let's let
15 them go vote and then they're not going to --
16 we'll catch them later because you can ask
17 for a recount, you have -- you would have --
18 you could theoretically have an entire
19 precinct lost because nobody -- nobody handed
20 the voter this -- this piece of paper for a
21 signature. And, again, I think if we go --

22 MR. CHAIRMAN: Except that the
23 Democrat on the other side of that would make
24 sure that didn't happen.

25 MR. BROOKS: Well, apparently it

1 does happen. It does happen, and if -- if
2 they're -- if in -- in several cases that
3 we've seen now, you've got some bipartisan --
4 who knows who was responsible in particular,
5 but these were all bipartisan boards. It
6 happens. So you -- so if one is not paying
7 attention and you're just not handing them
8 in, I guess --

9 MR. CHAIRMAN: But your example
10 just stated that the whole precinct could get
11 disenfranchised.

12 MR. BROOKS: Yeah, it could. I
13 mean, basically -- basically you're allowing
14 people to send the ballots, invite them to
15 vote and not correct the situation. If my --
16 my absentee ballot application is invalid for
17 some reason, I as a voter should be able to
18 take comfort in the section that says
19 somebody is going to have to challenge it and
20 then the local board is going to have to vote
21 in a public proceeding by definition, then I
22 know that I can go vote live on Election Day.
23 I can redo the application. I've got all
24 sorts of options. It's just incredible that
25 you could miss this whole process of

1 challenging, lead somebody to believe they
2 were -- leading them to believe they've cast
3 a legal ballot and then after the election
4 say it can't be cast.

5 MR. CHAIRMAN: Duly noted.

6 The opinion of my -- of our counsel up
7 here is we can look into this, so we are.

8 Anything else? Are you done,
9 Mr. Brooks?

10 MR. BROOKS: Yes.

11 MR. CHAIRMAN: Questions.

12 MR. DURNIL: Mr. Brooks, as I
13 understood what the clerk said a while ago,
14 this form wouldn't be completed if the voter
15 wasn't there. The voter comes in and says:
16 My name is X-X and they then -- the clerk
17 goes to the -- the computer and completes
18 this form. Is that right?

19 MR. CHAIRMAN: Right.

20 MR. DURNIL: And then supposedly
21 it's handed over for the signature and both
22 of them initial it, the Republican and
23 Democrat initial it. It's not the voter's
24 fault.

25 MR. BROOKS: Well, I think that's

1 an outstanding point, Mr. Chairman. You've
2 got two initials saying that this person was
3 here. These are the same people who went
4 through the process that Ms. Kirk described.
5 So you've got two people saying this person
6 was here and I'm now okaying this, and if you
7 -- to get to this point, they've had to show
8 ID under the process, and that's what they're
9 attesting to. These initials are attesting
10 to the fact that they went through that
11 process. I don't understand why we would
12 believe -- the poll book, for example,
13 Mr. Chairman --

14 MR. CHAIRMAN: I'd like -- I'd
15 like to ask Counsel --

16 MR. BROOKS: -- how do you know
17 that person is real?

18 MR. CHAIRMAN: I'd like to ask
19 Counsel what the legal meaning of those --
20 those initials are --

21 MR. BROOKS: Presumably --

22 MR. CHAIRMAN: -- because it's
23 been alleged that the purpose of these
24 initials is to attest to and otherwise verify
25 the process that Susan Kirk testified to

1 earlier.

2 Brad.

3 MS. BARNES: Mr. Chairman.

4 MR. KING: Thank you,
5 Mr. Chairman and members of the Commission.

6 Presuming that the initials in this
7 case are those of the bipartisan Absentee
8 Voter Board, the initials would indicate that
9 the application has been approved and that
10 pursuant to statute, an absentee ballot was
11 then issued to the applicant, it constitutes
12 approval of the qualifications of the voter
13 in requesting the absentee ballot.

14 MR. CHAIRMAN: Thank you.

15 Counsel.

16 MS. BARNES: Thank you,
17 Mr. Chairman.

18 That may be what the Commission decides
19 to interpret those initials to mean, but
20 there's no statutory provision that requires
21 the absentee board members to initial the
22 application upon approval. That may be
23 something that the county does, but it's not
24 required by state statute and there's no legal
25 significance to those initials.

1 MR. CHAIRMAN: Do -- do you agree
2 with that, Brad?

3 MR. KING: No, Mr. Chairman, I
4 don't.

5 MR. CHAIRMAN: Okay.

6 MR. KING: It's true that there's
7 no requirement for the County Election Board
8 or the Absentee Voter Board to indicate its
9 approval by initials, but the County Election
10 Board is required to either approve or reject
11 an absentee ballot application, and if, in
12 fact, the initials on this particular
13 document are those of the Absentee Voter
14 Board members, then the board can consider
15 whether that constitutes evidence that the
16 application was approved following the
17 demonstration that the applicant has met the
18 requirements.

19 MR. CHAIRMAN: Okay. Thank you.

20 Questions from Commissioners.

21 Discussion.

22 Motions.

23 MR. KUZMAN: Mr. Chairman, I'd
24 like to -- to move that, as we did in Perry
25 -- I believe it was Perry 1, that this vote

1 is not counted.

2 MR. CHAIRMAN: Second.

3 Discussion.

4 I agree with the motion.

5 All in favor?

6 MR. KUZMAN: Aye.

7 MR. CHAIRMAN: Aye.

8 Opposed?

9 MR. DURNIL: Nay.

10 MR. CHAIRMAN: Motion carries two
11 to one.

12 Mr. Brown, anything else there?

13 MR. BROWN: No further disputes
14 in that precinct. Thank you.

15 MR. CHAIRMAN: And that was --

16 MR. SKOLNIK: That was Perry 6.

17 MR. CHAIRMAN: -- Perry 7?

18 MR. DURNIL: 6.

19 MR. SKOLNIK: 6.

20 MR. CHAIRMAN. 6.

21 Mr. Brooks.

22 MR. BROOKS: We withdraw ours if
23 we had any.

24 MR. CHAIRMAN: Okay.

25 Mr. Skolnik.

1 MR. SKOLNIK: Mr. Chairman,
2 again, it's my understanding that because of
3 the Commission's action that I am not able to
4 provide a tally in this precinct unless we're
5 able to determine who that voter -- which
6 candidate, if any, that that voter cast his
7 or her vote.

8 MR. CHAIRMAN: That's correct.
9 So Perry 6 is open.

10 MR. SKOLNIK: Mr. Chairman, we
11 now proceed to Perry Number 7. The State
12 Board of Accounts tally reflected 297 votes
13 for Mr. Deig, 411 for Ms. McNamara. There
14 were 11 no votes. There are no disputed
15 ballots listed on the State Board of Accounts
16 tally, but I assume this is one that
17 Mr. Brown had indicated.

18 MR. CHAIRMAN: Mr. Brown.

19 MR. BROWN: We withdraw any
20 disputes that --

21 MR. CHAIRMAN: Okay.

22 MR. BROWN: -- we have in
23 Perry 7.

24 MR. CHAIRMAN: Disputes withdrawn
25 in Perry 7. Thank you.

1 Mr. Brooks doesn't have any.

2 MR. BROOKS: We don't have any.

3 MR. SKOLNIK: Mr. Chairman,
4 therefore, the final tally in Perry 7 should
5 reflect 297 for Mr. Deig, 411 for
6 Ms. McNamara and 11 no votes.

7 MR. BROOKS: Oh, Mr. Chairman,
8 can I make a comment about this just for the
9 record.

10 MR. CHAIRMAN: Perry 7?

11 MR. BROOKS: Yes.

12 MR. CHAIRMAN: Yes.

13 MR. BROOKS: This is a precinct
14 where the certified results based --
15 indicated that there was one additional vote
16 for Wendy McNamara, and it's an example of
17 when the hard ballots were actually counted
18 that we were just short one ballot. So
19 compared to the certified result, there is
20 simply a missing ballot. So at that point we
21 just have to accept it's a manual count and
22 there's not a ballot to count. That also
23 happened in 6-7. And as we move forward, I
24 just wish to ask that the Commission to keep
25 in mind that these things happen. We've been

1 -- we've suffered through two that we knew
2 were -- were Wendy McNamara votes and the
3 ballots are just missing. That's all I have
4 to say just for the record.

5 MR. CHAIRMAN: Thank you.

6 Mr. Skolnik.

7 MR. SKOLNIK: Mr. Chairman,
8 again, I think I provided the Commission with
9 the tally in Perry 7.

10 MR. CHAIRMAN: Perry 8?

11 MR. SKOLNIK: Is there a motion
12 to --

13 MR. CHAIRMAN: Do you approve
14 Perry --

15 MR. DURNIL: Did he provide a
16 tally?

17 MR. SKOLNIK: You provide -- I
18 provided the tally.

19 MR. DURNIL: Okay.

20 MR. SKOLNIK: I don't know if the
21 Commission adopted to final it.

22 MR. DURNIL: Okay.

23 MR. SKOLNIK: I don't think it
24 did.

25 MR. DURNIL: That was the 297 and

1 411?

2 MR. SKOLNIK: Yes. 297 for
3 Mr. Deig, 411 for Ms. McNamara and 11 --

4 MR. DURNIL: I move we --

5 MR. SKOLNIK: -- no votes.

6 MR. DURNIL: I move we accept the
7 tally as final.

8 MR. CHAIRMAN: Motion and second.
9 All in favor.

10 Aye.

11 MR. KUZMAN: Aye.

12 MR. DURNIL: Aye.

13 MR. CHAIRMAN: Ayes are
14 unanimous.

15 Mr. Skolnik.

16 MR. SKOLNIK: We now proceed to
17 Perry Number 8. The State Board of Accounts
18 tally reflected 172 votes for Mr. Deig, 220
19 for Ms. McNamara and 12 no votes tallied by
20 the State Board of Accounts.

21 MR. CHAIRMAN: Mr. Brown.

22 MR. BROWN: We withdraw any
23 disputes remaining in this precinct.

24 MR. CHAIRMAN: Any disputes from
25 Mr. Brown are now withdrawn. Thank you.

1 Mr. Brooks, anything?

2 MR. BROOKS: I'm sorry?

3 MR. CHAIRMAN: Anything there for
4 you?

5 MR. BROOKS: None. We have no
6 disputes.

7 MR. CHAIRMAN: Mr. Skolnik.

8 MR. SKOLNIK: Mr. Chairman, the
9 tally in Perry 8 should reflect 172 votes for
10 Mr. Deig, 220 for Ms. McNamara and there were
11 12 no votes.

12 MR. DURNIL: I move we accept the
13 tally as final.

14 MR. CHAIRMAN: Second.

15 All in favor.

16 Aye.

17 MR. KUZMAN: Aye.

18 MR. CHAIRMAN: Any opposed?

19 None.

20 Motions carries unanimously.

21 MR. SKOLNIK: Turning our
22 attention to Perry Number 9, the State Board
23 of Accounts tally reflected 125 votes for
24 Mr. Deig, 147 for Ms. McNamara. There were
25 two disputed valid ballots tallied by the

1 State Board of Accounts for Ms. McNamara and
2 there are ten no votes tallied by the State
3 Board of Accounts.

4 MR. CHAIRMAN: Thank you.

5 Mr. Brown.

6 MR. BROWN: Yes. Exhibit Number
7 -- I believe it's Number 2. Perry 9,
8 Exhibit 2.

9 MR. CHAIRMAN: Perry 9, Exhibit
10 2.

11 MR. BROWN: And, Mr. Chairman,
12 while they're handing those out, I'm also
13 going to submit the Absentee Activity Report
14 from this precinct as an exhibit.

15 MR. CHAIRMAN: Without
16 objections.

17 Okay.

18 MR. SKOLNIK: Mr. Chairman, I've
19 just been handed by Mr. Brown what will be
20 identified as Exhibit P8.

21 MR. CHAIRMAN: P8. Oh, wait.
22 Counsel is telling me we already have a P8.

23 MR. SKOLNIK: Okay. Well, we'll
24 mark this as Exhibit P9 just to remove any --
25 any uncertainty.

1 MR. CHAIRMAN: Mr. Brown.

2 MR. BROWN: As you can see,
3 Mr. Chairman and members of the Commission,
4 this voter signed their ballot. The Absentee
5 Activity Report I submitted as an exhibit
6 shows that it looks like Robert Seibert is
7 the one -- I'm not a handwriting expert, but
8 it looks to be Robert Seibert, and that
9 person shows up on the activity report, and,
10 therefore, we request under 312-110, which
11 was used earlier to invalidate a ballot
12 signed by the confined voter in a different
13 precinct, the same statute be ruled on and
14 the Commission rule in a consistent manner
15 that this vote be invalidated. Thank you.

16 MR. CHAIRMAN: Thank you.

17 Counsel. Mr. Brooks.

18 MR. BROOKS: Mr. Chairman, we
19 agree that the -- the voter writes his name
20 on a ballot that it does not not be counted,
21 and that's what happened if you recall in the
22 one we opened. The difference here, though,
23 is that you looked at the signature which was
24 in the privacy envelope and saw the name.
25 What is missing in Mr. Brown's argument here

1 is that that is, in fact, Mr. Seibert or
2 whatever his name is, that's his signature as
3 opposed to, for example, somebody knowing who
4 he is is a poll worker and a poll worker
5 writing the name on there.

6 So we've got a missing element here, is
7 that you don't know that that's his
8 handwriting and that the voter did it as
9 opposed to it, and so we would request that
10 in the absence of that absent evidence that
11 Mr. Brown has not carried his burden of
12 proof.

13 MR. CHAIRMAN: All right. So I'm
14 not going to not allow Mr. Brown to address
15 that. Are there other exhibits here for us
16 to look at or not?

17 MR. BROWN: There are no other
18 exhibits, Mr. Chairman. I just went through
19 almost all thousand pages of the '06 recount
20 where this Commission invalidated ballots with
21 signatures on them upon a finding that the
22 voter was registered and voted in that
23 precinct. That's what that Absentee Activity
24 Report shows you. They voted by a paper
25 ballot in this precinct and the -- the name

1 seems to match the signature. And, in fact,
2 at one point in the '06 recount, there were
3 simply initials and the only -- only burden
4 required by the Commission at that point was
5 to show there was at least one voter in the
6 -- in the district that had -- in the
7 precinct that had those initials. We're
8 doing more than that; we're showing you
9 there's a voter that correctly corresponds to
10 the signature, so I believe we have carried
11 our burden of proof and would urge you to
12 invalidate the ballot.

13 MR. CHAIRMAN: And you can't
14 produce Robert's signature through the poll
15 book or anything else or --

16 MR. DURNIL: Or the envelope.

17 MR. CHAIRMAN: -- or the envelope
18 or -- was it in person?

19 MR. DURNIL: It says mailed.

20 (Off the record - Counsel
21 conferring)

22 MR. CHAIRMAN: The activity
23 reports says the mail.

24 MR. BROWN: Unfortunately, I
25 don't believe we made an exhibit of the

1 application. I believe it's in the State
2 Board of Accounts materials. If the
3 Commission will allow it, we would ask that
4 they look at the mail-in applications, which
5 I believe it is because it's a paper ballot,
6 and see if -- determine if Mr. Seibert did,
7 in fact, send in a signed secrecy envelope.
8 I apologize for the inconvenience.

9 MR. BROOKS: We would object to
10 that. I mean, there are certain situations
11 where the recounts I've been involved in have
12 gone back to look for something, but -- but
13 the whole idea in a -- in a counting, for
14 example, because we couldn't tell for sure
15 from the State Board of Accounts whether or
16 not it was counted or not, that's one thing.
17 It's a little different to open this back up
18 because Mr. Brown failed to get the evidence
19 and make the exhibits; otherwise, what's the
20 point of closing up the precinct if we can
21 say, oh, I wish I had made another exhibit.
22 I think at this point I wish I might have
23 made a lot of exhibits and done a lot of vote
24 checking on people who didn't sign
25 applications, but we didn't. We're not

1 asking the Commission to go back in and let's
2 look for some more that don't have these
3 signatures. So we object. I mean, he had
4 every opportunity to make -- make this case
5 and tie it up and didn't do it.

6 MR. CHAIRMAN: Okay. Thank you.

7 Questions from Commissioners.

8 Discussion.

9 Motion.

10 MR. KUZMAN: I'd like to make a
11 motion that we get this from the State Board
12 of Accounts, the application to see the
13 signature.

14 MR. CHAIRMAN: Second.

15 Discussion.

16 MR. DURNIL: The motion was what?

17 MR. KUZMAN: To have the State
18 Board -- to have the State Board of Accounts
19 look at the signatures to see if they -- if
20 they are the same signatures.

21 MR. CHAIRMAN: All in favor of
22 the motion.

23 Aye.

24 MR. KUZMAN: Aye.

25 MR. DURNIL: Aye.

1 MR. CHAIRMAN: Motion carries.

2 Would the State Board find that,
3 please. Thank you.

4 Discussion.

5 Motions.

6 MR. KUZMAN: I move that we
7 invalidate this ballot.

8 MR. CHAIRMAN: Second.

9 Any discussion.

10 All in favor signify by saying, "Aye."

11 MR. KUZMAN: Aye.

12 MR. CHAIRMAN: Aye.

13 MR. DURNIL: Aye.

14 MR. CHAIRMAN: Motion carries
15 unanimously.

16 Mr. Brown.

17 MR. BROWN: We withdraw any
18 further disputes in Perry 9.

19 Mr. Brooks, anything there?

20 MR. BROOKS: If we have any more,
21 we withdraw. Oh, I'm sorry. Let's look at
22 it.

23 MR. CHAIRMAN: Perry 9. Yeah,
24 you don't have anything.

25 MR. SKOLNIK: Are we looking

1 at --

2 MR. KUZMAN: Did you -- did you
3 throw this out?

4 MR. CHAIRMAN: We invalidated the
5 ballot.

6 MR. BROOKS: I have no
7 challenges. We withdraw them if we did.

8 MR. CHAIRMAN: Okay. Thank you.
9 Mr. Skolnik.

10 MR. SKOLNIK: Mr. Chairman, the
11 tally in Perry 9 reflects 125 votes for
12 Mr. Deig, 146 votes for Ms. McNamara and
13 there are ten no votes.

14 MR. DURNIL: I move we accept the
15 tally.

16 MR. SKOLNIK: Excuse me. There
17 should be one -- would there be one invalid
18 ballot --

19 MR. DURNIL: I didn't see that.

20 MR. SKOLNIK: -- Mr. Chairman,
21 one that was thrown out? That's been ruled
22 invalid. There will be one invalid for
23 McNamara. So let me repeat that just so
24 we're clear.

25 125 votes for Mr. Deig, 146 for

1 Ms. McNamara, one invalid ballot for
2 Ms. McNamara and ten no votes.

3 MR. DURNIL: I move we accept the
4 tally as final.

5 MR. CHAIRMAN: Second.

6 All in favor?

7 MR. KUZMAN: Aye.

8 MR. DURNIL: Aye.

9 MR. CHAIRMAN: Aye.

10 Motion carries unanimously.

11 Mr. Skolnik.

12 MR. SKOLNIK: We now turn our
13 attention to Perry Number 10. The State
14 Board of Accounts tally reflected that there
15 were 87 votes tallied for Mr. Deig, 96 for
16 Ms. McNamara and there were four no votes.

17 MR. CHAIRMAN: Mr. Brown.

18 MR. BROWN: Thank you,
19 Mr. Chairman and members of the Committee.

20 The exhibit number is Exhibits 1 and 2.

21 MR. CHAIRMAN: Exhibits 1 and 2.

22 MR. SKOLNIK: And it's Perry 10.

23 MR. CHAIRMAN: Perry 10. Okay.

24 MR. BROWN: Exhibit 2 you'll see
25 is a provisional ballot. The voter was --

1 was required to show ID at the polling
2 location and he later came in and showed that
3 ID. The County Election Board on the 12th
4 decided not to count the ballot after hearing
5 evidence of residency. And we would like to
6 submit an affidavit by this voter's roommate,
7 as well as -- I'll let opposing counsel see
8 the affidavit.

9 Mr. Chairman, we're also going to
10 submit exhibits for checks that correspond to
11 the address of the voter as well as the voter
12 registration, as well as -- well, that would
13 be it, the pay stubs and the voter
14 registration.

15 MR. SKOLNIK: I've just been
16 handed an exhibit by -- a proposed exhibit by
17 Mr. Brown that will be marked as Exhibit P10.

18 MR. BROWN: I'm sorry. One last
19 exhibit, an e-mail between the roommates
20 concerning -- actually, this one is from the
21 voter concerning utility payments made at the
22 address.

23 MR. BROOKS: What does this mean,
24 Adam (indicating)?

25 MR. BROWN: We'll withdraw this

1 one. This one is too confusing.

2 MR. SKOLNIK: Are you withdrawing
3 this (indicating)?

4 MR. BROWN: Just -- just the one.
5 Those exhibits are still good.

6 MR. SKOLNIK: Oh, okay.

7 MR. BROWN: Sorry, Mr. Chairman.
8 I'm a bit weary at this point, so I'm sorry.
9 I'm trying to gather myself.

10 This voter registered and was -- had a
11 valid registration, and, in fact, at the
12 Election Board meeting, that wasn't even
13 disputed. The dispute was on his residency.
14 This voter came in and showed a passport as
15 was required and we believe his vote should
16 be counted. And we have an affidavit from
17 his roommate; we have pay stubs. He was here
18 for nearly nine -- I mean, since early in
19 this year. The statutory requirement is 30
20 days. In fact, the constitution requires 30
21 days residency in the precinct before the
22 election day. And you'll hear arguments from
23 opposing counsel about intent to come back to
24 a home. This person left for work, earned a
25 paycheck, came back to that location for nine

1 months in a row, but somehow, even though we
2 have statutes in our Indiana code to allow
3 homeless people to vote, somehow this
4 person's residency was at issue. We just
5 don't believe it was fair. This voter did
6 everything they needed to do to -- to vote
7 and we feel it should be counted. Thank you.

8 MR. CHAIRMAN: Thank you.

9 Counsel.

10 MR. SKOLNIK: Mr. Chairman, sorry
11 to interrupt. You have been -- Mr. Brown has
12 provided Exhibits P11 through 18 that have
13 been handed to the Commission.

14 MR. CHAIRMAN: Thank you.

15 Counsel.

16 MR. BROOKS: Yes, Mr. Chairman.

17 We believe the Vanderburgh County Local
18 Board was absolutely correct in not opening
19 this provisional ballot for a multitude of
20 reasons. First, the issue came up because
21 the -- on the poll list, which is part of the
22 exhibit thing -- do you have the poll page in
23 that? This is a multiple-page exhibit.

24 MR. CHAIRMAN: Yeah.

25 MR. BROOKS: So you have that?

1 MR. CHAIRMAN: Yeah. Is that
2 this (indicating)?

3 MR. BROOKS: No, no. The poll
4 book page.

5 MR. CHAIRMAN: Yeah.

6 MR. BROOKS: Okay. As you'll see
7 on -- for Mr. Knowling, it says: Affirmation
8 of residence required.

9 Mr. Knowling did not provide at the
10 poll any affirmation of residence required;
11 that is, he didn't produce anything that had
12 an address where he was registered at. So he
13 was properly challenged based on the poll
14 book. I think the -- the affidavits and the
15 privacy envelopes all indicate that he didn't
16 show proper residence. He filled out the
17 provisional affirmation and had the requisite
18 ten days to come in and show something with
19 an address on it. He didn't do it. He came
20 in and he showed a passport. The passport
21 has no residence, so it did not satisfy the
22 affirmation of residence required. That's
23 one level. That particular statute is one
24 that applies to mail-in ballots, and at this
25 point I would ask Connie to come up and

1 testify for a moment?

2 MR. CHAIRMAN: Okay. Yes,
3 please. Thank you.

4 CONNIE CARRIER

5 being first duly sworn upon her oath, testified
6 as follows:

7 MR. CHAIRMAN: Please be seated
8 and state your name for the record. Thank
9 you.

10 THE WITNESS: Connie Carrier.

11 DIRECT EXAMINATION

12 MR. BROOKS:

13 Q Before we get too far, do you have the card?

14 A Oh, yes.

15 Q Would you please tell the Commission your
16 title and job duties with Vanderburgh County.

17 A I'm the Republican board member in
18 Vanderburgh County.

19 Q Okay. And did you happen to bring -- well,
20 let me just ask you, was this registration
21 one by mail?

22 A Yes.

23 Q And if it was one by mail and that
24 determination was made at the time the
25 application came in, then that would have

1 triggered this affirmation of residence
2 required?

3 A It's because the acknowledgement card came
4 back.

5 Q Okay. Have you had an opportunity to examine
6 the original voter registration card?

7 A Sure did.

8 Q And what does that tell you about whether or
9 not it was mailed in or done in person?

10 A The date he signed it was 9.26.2010. That
11 was a Sunday. We don't work on Sundays.

12 Q So you would not have been able to do that in
13 person at the office?

14 A No.

15 Q Okay. And is there anything else about that
16 card that --

17 A There's a crease where it had been folded.

18 Q Are there creases on -- and fold marks for
19 in-person restorations?

20 A No.

21 MR. BROOKS: That's the only
22 question I have for Connie.

23 MR. CHAIRMAN: Thanks.

24 Cross.

25 MR. BROWN:

1 Q Connie, do you allow your voter registration
2 applications to be printed on-line?

3 A Do I allow it?

4 Q I mean, is it --

5 A The state does.

6 Q -- allowed in Vanderburgh County.

7 A The state does.

8 Q And so could someone print it off, sign and
9 date it and bring it in the next day?

10 A If -- do you mean on-line voter registration?
11 It's a different printout.

12 Q Than the one you have there?

13 A Yes.

14 Q Okay. So there's no way that form could get
15 that date on it?

16 A No. It's handwritten.

17 MR. BROWN: Could I -- could I
18 see the form, please. I haven't seen it.

19 MR. CHAIRMAN: Please approach.

20 THE WITNESS: You have a copy of
21 it.

22 MR. BROWN: Thank you.

23 Q So these forms, where -- where are these
24 forms available?

25 A They're available on-line through the Indiana

1 State Election Division. You can register to
2 vote on-line, but that is a different form
3 when it's printed out.

4 Q Those forms -- that particular form is not
5 available anywhere else?

6 A On-line.

7 Q No, no, no. Not the actual -- I meant the --
8 you said there was no way that form could
9 have been printed off-line because it's a
10 different -- it's -- it looks different and
11 somehow it's distinguishable. What I'm
12 saying is, voter registration drives have
13 those forms as well or --

14 A You can tell this -- in the -- in the -- on
15 the bottom part here, it's a 50 -- 504.
16 That's an internet printout. It was printed
17 out and mailed in.

18 Q Well, wait a minute. I'm confused now.

19 You said it was not printed on -- it
20 was not printed from on-line. I don't
21 understand. I just asked you whether the --
22 the form -- so that form was printed on-line.

23 A According to the number, it was.

24 Q Okay. So we don't -- I mean, we don't have
25 an envelope to go with it; we have no way of

1 knowing the voter did not bring the form in
2 the day after he signed it?

3 A According to the original form here, there's
4 a crease like it's been folded and mailed.

5 Q But -- but it also could be that the voter
6 folded it and put it in his pocket?

7 A I doubt that very much. It's not wrinkled.

8 Q Okay. Well, absent your observations about
9 the fold, are there any other -- is there any
10 other evidence this voter did not register in
11 person?

12 A We -- we are not open on Sundays.

13 Q Okay. Well, it was dated -- okay. Thank
14 you.

15 MR. BROWN: I have no further
16 questions.

17 MR. CHAIRMAN: Thank you.

18 Mr. Brooks, continue with your
19 argument.

20 MR. BROOKS: No. I'm finished
21 with that witness and that part of our
22 argument.

23 The first argument --

24 MR. CHAIRMAN: You're continuing
25 with your case for this ballot?

1 MR. BROOKS: Yes.

2 MR. CHAIRMAN: Oh, excuse me.

3 Yeah. Commission question.

4 MR. KUZMAN:

5 Q Could somebody sign that on Sunday and bring
6 it in on Monday?

7 A It's -- it -- here, you look at --

8 Q The question is real clear. If --

9 A You look at the card and you tell me it
10 wasn't folded and mailed in.

11 Q I'm -- I'm not a mail expert. I'm asking a
12 question.

13 Can somebody sign this form, date it on
14 Sunday and bring it in on Monday? It's a
15 "Yes" or "No" answer.

16 A I don't know.

17 Q So the date is insignificant. They could
18 have signed that that day and brought it in
19 the next day.

20 A We don't work on Sundays.

21 Q I understand you don't work on Sundays, but
22 could I print this form off today and bring
23 it to your office tomorrow even though it's
24 dated that day and it's still valid?

25 A Could you?

1 Q Yes.

2 A I assume.

3 Q Okay.

4 MR. CHAIRMAN: Do you want this
5 admitted into evidence, by the way?

6 MR. BROOKS: We'll, it's the
7 original card --

8 THE WITNESS: Yep.

9 MR. BROOKS: -- and I assume they
10 need it back, but --

11 MR. CHAIRMAN: Do we have a copy
12 of it?

13 MR. BROOKS: I think you -- I
14 think it's fair enough for you guys to look
15 at it, but it's up to you whether they need
16 the original card back.

17 MR. KUZMAN: Make a photocopy.

18 MR. BROOKS: Well, that's -- the
19 photocopy is actually --

20 MR. KUZMAN: Is it?

21 MR. BROOKS: -- in the materials,
22 I believe, isn't it? I have one.

23 MR. BROWN: Exhibit 28D.

24 MR. BROOKS: It's got a little
25 circle at the bottom.

1 MR. SKOLNIK: Exhibit 28D is in
2 the materials.

3 MR. DURNIL:

4 Q Why -- why are you making the argument about
5 not being there on Sunday?

6 A I'm going by the date that the voter signed
7 the card.

8 Q But did the voter have --

9 A It was brought up about it being by mail, so
10 I'm -- I'm assuming it was by mail because of
11 the date it was signed and there's a crease
12 that shows it's been folded, because we do
13 not work on Sundays.

14 Q So your point is that it was mailed in?

15 A That's the point I'm making.

16 MR. CHAIRMAN: Okay. Any more
17 questions?

18 Hearing none.

19 Connie, thank you very much.

20 MR. BROOKS: Actually, could I
21 ask one follow-up question.

22 MR. CHAIRMAN: Okay.

23 MR. BROOKS:

24 Q Connie -- Connie, was it -- was there a
25 contemporaneous determination when it came

1 in, obviously, that it was by mail?

2 A Say that again.

3 Q When -- when it came in, did somebody make
4 that determination, that it was by mail, that
5 is, at the time it came in as opposed to
6 later?

7 A I don't think so.

8 Q Okay.

9 MR. BROOKS: I don't have any
10 more questions.

11 MR. CHAIRMAN: Okay.

12 Thank you. Step down, ma'am.

13 MR. BROOKS: So if it is by mail,
14 which the evidence seems to support, then
15 he's required to provide something with an
16 address on it; furthermore, if you look at
17 these alleged -- we looked at -- we just
18 looked at some utility bills; we looked at
19 some things. It's not very hard to bring
20 something in with an address, and he knew at
21 the time he voted provisional that that was
22 why he had to come in with something for an
23 address.

24 Secondly, if you look at the -- there's
25 a -- ours is stapled -- there's a couple of

1 -- 28A -- I've got three things stapled
2 together, which is the voter registration
3 acknowledgement notice.

4 (Off the record - Counsel looking
5 for exhibit)

6 MR. CHAIRMAN: Okay. Got it.

7 Okay. Mr. Brooks.

8 MR. BROOKS:

9 Q Ms. -- Ms. Kirk, when a registration comes
10 in, does your -- does the Local Election
11 Board send --

12 MR. CHAIRMAN: I just want to
13 remind you that you're still under oath,
14 Ms. Kirk. Thank you.

15 Q -- send out acknowledgement notices to
16 voters?

17 A Is that the normal thing to do?

18 Q Yeah.

19 A Yes.

20 Q Is that your normally way of doing it?

21 A Yes. And I think if the gentleman or
22 whoever, the voter would have come into the
23 office and hand delivered one, they would
24 have asked for some type of identification;
25 otherwise, it would not have shown on the

1 poll book that he needed to show address.
2 That's the key there. Whether he walked it
3 in, it was mailed in, whatever, if -- if he
4 did not produce that, then that's why it's
5 triggered so that they know at the polls when
6 he comes in they are to ask for something
7 with an address, which is your driver's
8 license or a utility bill or whatever.
9 Apparently that did not happen.

10 Q But is your normal procedure then -- if
11 they've mailed it in, for example, you would
12 then mail the voter an acknowledgement card
13 saying we've got your registration and you're
14 registered?

15 A Yes.

16 Q I'm going to show you what -- it's two pages
17 -- three pages, but the first one is dated --
18 has a postmarked -- or the post -- postage
19 meter mark of October 6th and ask what was
20 the result when you sent Mr. Knowling his
21 voter acknowledgement card?

22 A Well, I got it back in the mail. It says
23 return to sender. Is that right? I don't
24 have my glasses on. Return to sender. I
25 don't have my glasses on.

1 Q Return to sender. Left no address. Unable
2 to forward. Return to sender.

3 Okay? So this one came back.

4 A Yes.

5 Q And then do you recall trying again to send
6 him something later post -- something
7 postmarked October 15th? What would you have
8 sent at that point?

9 A Yes. By statute once you get one back in the
10 mail and you give it another try and you send
11 another card back out to be sure that it
12 wasn't maybe an error at the post office that
13 he -- that this voter did not receive it the
14 first time. The second one also came back as
15 non-deliverable.

16 Q Okay. So you sent two -- two
17 acknowledgements per statutes and both came
18 back.

19 A Yes, sir. That's why the board voted not to
20 count it, because he did not meet the
21 requirements set forth by statute that he was
22 to show address, proof of address, and
23 obviously a passport does not demonstrate
24 that.

25 MR. BROOKS: Mr. Chairman, I

1 would call your attention to Indiana Code
2 3-7-33-5.

3 Quick, Brad, what page is that on?

4 MS. BARNES: 133.

5 MR. BROOKS: 133?

6 Whoa, you are slowing down.

7 MS. BARNES: It's late.

8 Q And this -- this section essentially tells
9 you that you've got to make a determination
10 of eligibility when you get this -- these
11 applications and requires notice to the
12 person who has submitted a voter registration
13 application.

14 If you look in C3A, it says acceptance
15 provided if the applicant is registered to
16 vote under the resident's address when the
17 applicant receives notice; however, an
18 applicant is presumed to have received the
19 notice unless the notice is returned to the
20 -- by the United States Postal Service due
21 to an unknown or insufficient address and
22 received by the county voter registration
23 office not later than seven days after the
24 notice is mailed to the applicant.

25 You go further down in the subsection:

1 If the notice is returned by the United
2 States Postal Service due to an unknown or
3 insufficient address, the county voter
4 registration office shall determine that the
5 applicant is ineligible and deny the
6 application.

7 So at the point -- if he mailed it in,
8 which appears to be the case, and didn't
9 provide anything with an address on it, he
10 can't vote, which he didn't. If you send out
11 the notices and they come back, the
12 registration is invalid, which is, of course,
13 a good reason to -- for the Local Election
14 Board not to allow the voting.

15 Now, in addition to that, we presented
16 some additional evidence. No additional
17 evidence other than what we just talked about
18 is necessary to determine that this
19 provisional should not have been opened. But
20 this -- this individual is a campaign
21 operative. You'll notice that his checks are
22 paid for by the Democrat State Committee and
23 the Victory Commission, whatever -- whatever
24 it is. We -- we provided some information
25 off the internet, off of Mr. -- off this

1 particular voter's own website or linked in
2 or -- if I have the right term. But in any
3 event, he moves every year. He was, in the
4 prior three years, in Washington, Louisiana
5 and North Carolina in some different form or
6 fashion. He did not have one of these
7 documents we'll show you from BMV. He did
8 not get an Indiana driver's license. And
9 you'll see the address -- or the affidavit
10 from the manager of the complex that he was
11 at. The key here is that he was -- never had
12 a lease, never been a tenant. Consistent
13 with affidavit of the roommate, he had
14 authorization to stay there on a limited and
15 temporary basis only. Interestingly enough,
16 what Mr. Brown doesn't tell you about this
17 particular roommate is -- I -- I don't think
18 he -- he said it, but he couldn't say he was
19 his current roommate, because at the Election
20 Board he testified that as of November 12th,
21 he had already moved to Portland, Oregon,
22 consistent his past pattern.

23 So what we would submit is this
24 additional information provides -- provided
25 the Local Election Board with some additional

1 support for the fact that -- that this
2 probably was not a good registration. He --
3 he was exactly what -- what he appeared to be
4 and -- and led everybody else to believe.
5 He's in to do a campaign and out, and that --
6 that does not satisfy the permanent residency
7 intent that's required.

8 But while Mr. Brown describes this as a
9 residency issue, you don't really have to
10 give to this residency/unresidency thing --
11 if you conclude that he mailed it in and he
12 didn't provide the proper -- he came in with
13 a passport, no address, you don't have to
14 worry about residency. And we know for a
15 fact that he got the acknowledgements back
16 and, therefore, his -- his registration was
17 invalid as a matter of law by the time that
18 Mr. Knowling -- sorry -- this voter was ruled
19 upon under provisional. And if there was any
20 -- I mean, he had a chance to come in and
21 provide just something with an address on it.
22 It's not hard to do if you really live
23 someplace. And he failed to do so, so we
24 would request that the Commission uphold the
25 Vanderburgh Local County Board and not open

1 this for provisional.

2 MR. CHAIRMAN: Questions by
3 Commissioners.

4 MR. KUZMAN: I do.

5 MR. CHAIRMAN: Mr. Kuzman.

6 MR. KUZMAN: Mr. Brooks, I --
7 Mr. Brooks, I looked at the -- I'm looking at
8 the statute and you cited 3-7-33-5 3A,
9 correct?

10 MR. BROOKS: Did I just cite
11 that?

12 MS. BARNES: C3.

13 MR. KUZMAN: I'm sorry. C -- C3.
14 C3. Is that right?

15 MR. BROOKS: C3A I cited, yes.

16 MR. KUZMAN: Okay. And it reads:
17 An applicant is presumed to have notice and
18 received the notice unless the notice is
19 returned by the United States Post -- Postal
20 Service due to an unknown or sufficient
21 address.

22 MR. BROOKS: Insufficient.

23 MR. KUZMAN: Insufficient. And
24 on the stamps -- and I understand there's a
25 bunch of stamps they could use -- they used

1 moved and left no address. Moved, left no
2 address. Unable to forward.

3 That's -- is that the same as unknown
4 or insufficient that the statute calls for?

5 MR. BROOKS: It's certainly an
6 insufficient address for this voter.

7 MR. KUZMAN: But is that the --
8 is the specific stamp -- is there supposed to
9 be a specific stamp used, the post office
10 uses rather than this one? Could -- because
11 it could -- let me ask this question: Could
12 it be because his name wasn't on the mailbox
13 that stamp could be put on there?

14 MR. BROOKS: I assume that people
15 who move in have -- generally fill out
16 change-of-address forms, and if you're
17 delivering mail to a place where somebody is
18 actually residing on any permanent basis,
19 you'll see magazines, bills, et cetera, et
20 cetera, so I don't know the technical --

21 MR. KUZMAN: So there's not a
22 strict --

23 MR. BROOKS: I don't technically
24 know the answer to your question in terms of
25 what causes them to do this, but obviously

1 they've made a formal determination and
2 obviously this is an insufficient address for
3 this particular voter as far as the postal
4 service is concerned.

5 MR. CHAIRMAN: Okay.

6 MR. KUZMAN: Okay.

7 MR. CHAIRMAN: Other questions.

8 I have one.

9 Just so I understand, these
10 acknowledgment forms are also -- it isn't in
11 the envelope, but what was in here in terms
12 of an acknowledgement form, that's only done
13 with mail-ins or is that done with all voter
14 registrations, the in-person ones, the
15 counter ones?

16 MR. BROOKS: I don't -- I don't
17 have the answer to that.

18 MS. KIRK: All.

19 MR. CHAIRMAN: Susan. All --
20 it's done with all? Okay. Thank you.

21 Motions.

22 MR. DURNIL: I move we uphold the
23 vote of the County Election Board.

24 MR. CHAIRMAN: Second.

25 Discussion.

1 Hearing none.

2 All in favor?

3 MR. DURNIL: Aye.

4 MR. CHAIRMAN: Aye.

5 Opposed?

6 MR. KUZMAN: Aye.

7 MR. CHAIRMAN: Motion carries.

8 Thank you.

9 Anything else, Mr. Brown?

10 MR. BROWN: No. No further
11 disputes -- or disputes withdrawn.

12 MR. CHAIRMAN: Mr. Brooks,
13 anything?

14 MR. BROOKS: No.

15 MR. CHAIRMAN: Mr. Skolnik.

16 MR. SKOLNIK: In Perry 10?

17 MR. BROOKS: No. We're
18 withdrawing everything we had.

19 MR. SKOLNIK: Mr. Chairman,
20 seeing that there's -- there are no other
21 disputes or objections in Perry Number 10,
22 the tally reads 87 for Mr. Deig, 96 for
23 Ms. McNamara and four no votes.

24 MR. DURNIL: I move we accept the
25 tally as final.

1 MR. CHAIRMAN: Second.

2 All in favor?

3 MR. DURNIL: Aye.

4 MR. CHAIRMAN: Aye.

5 All opposed?

6 MR. KUZMAN: Aye.

7 MR. CHAIRMAN: Motion carries two
8 to one.

9 Mr. Skolnik.

10 MR. SKOLNIK: Thank you,
11 Mr. Chairman.

12 There are still -- I note that there
13 were still two precincts, Perry 1 and Perry
14 6, that I -- I know were left open in -- in
15 Vanderburgh, but we're ready to proceed. At
16 this time we would now go next to consider
17 the two precincts in Gibson County.

18 MR. CHAIRMAN: So that last
19 precinct was Union 1 in Vanderburgh?

20 MR. SKOLNIK: Union 1 has already
21 been -- that was already approved when we
22 went through the --

23 MR. CHAIRMAN: Okay.

24 MR. SKOLNIK: -- precincts --

25 MR. CHAIRMAN: Gibson County.

1 MR. SKOLNIK: -- that were not
2 disputed.

3 MR. CHAIRMAN: Thank you.

4 MR. SKOLNIK: Gibson County.
5 Wabash 1, the entire precinct has been
6 disputed.

7 MR. CHAIRMAN: Mr. Brown.

8 MR. SKOLNIK: Do you want me to
9 read the -- well, we can just proceed.

10 MR. BROWN: We withdraw all
11 disputes in Wabash 1.

12 MR. CHAIRMAN: Thank you.

13 Mr. Brooks.

14 MR. BROOKS: If they're withdrawn
15 from Wabash 1, we withdraw.

16 MR. CHAIRMAN: Mr. Skolnik.

17 Thank you.

18 MR. SKOLNIK: Mr. Chairman, the
19 tally in Wabash 1 should read five ballots
20 tallied for Mr. Deig, five ballots tallied
21 for Ms. McNamara.

22 MR. DURNIL: I move we accept the
23 tally.

24 MR. CHAIRMAN: Second.

25 All in -- all in favor?

1 MR. DURNIL: Aye.

2 MR. CHAIRMAN: Aye.

3 Opposed.

4 Motion -- motion carries unanimously.

5 Mr. Skolnik.

6 MR. SKOLNIK: Thank you,

7 Mr. Chairman.

8 Next in Gibson County is Montgomery 2.

9 The entire precinct has been disputed.

10 MR. CHAIRMAN: Mr. Brown.

11 MR. BROWN: Yes. Because the
12 entire precinct was disputed, Mr. Chairman,
13 these exhibits are not individually
14 identified. I'm happy to -- I believe -- am
15 I wrong the State Board of Accounts -- sorry.
16 I believe the State Board of Accounts will --
17 I can show them what I'm looking to have
18 distributed if you like and make sure that
19 you have the correct exhibits. That way --

20 MR. CHAIRMAN: Let's just figure
21 it out right now. It's the last precinct.

22 MR. BROWN: Okay. There should
23 be an exhibit with the envelopes, spoiled
24 ballots and a ballot attached and also an
25 exhibit rejected absentees with two ballots

1 attached. And we also need to direct your
2 attention to -- and I will get the page of
3 the poll book -- to page 61 of 69 in the poll
4 book.

5 MR. CHAIRMAN: Page 61 and 69 --

6 MR. BROWN: Just 61. I'm sorry.
7 Just 61.

8 MR. CHAIRMAN: -- of the poll
9 book.

10 (Off the record - Gathering
11 exhibits)

12 MR. CHAIRMAN: I think Counsel
13 has witnesses ready to leave, so I just want
14 to make sure you guys don't need them any
15 more.

16 (Off the record - All witnesses
17 exiting the hearing)

18 MR. CHAIRMAN: Okay. We're
19 ready.

20 MR. BROWN: Thank you,
21 Mr. Chairman and members of the Commission.

22 The rejected absentees, which there are
23 two ballots, these were in -- this is an
24 envelope and there's nothing on the ballot,
25 on the face of the ballot that appears to be

1 -- to be defective. There's no void; there's
2 no rejected; there's no counted, not counted.
3 And the remaining ballots in the precinct, we
4 can go through them, if you like, but there's
5 no original or remake notation as required by
6 statute. We believe on the face of these
7 ballots there's simply nothing wrong but for
8 an envelope with no explanation. I mean, it
9 -- it says rejected absentees, but there's no
10 absentee materials. We have no reason to
11 know that these ballots shouldn't have been
12 remade and counted, and if they were, they
13 weren't counted, and we believe -- simply we
14 believe that there's -- these votes should
15 count.

16 MR. CHAIRMAN: Okay.

17 Counsel.

18 MR. BROOKS: Yes. With respect
19 to the rejected absentees, two things. One
20 is, on the last page of the poll book,
21 there's a notation from the workers that they
22 were spoiled and revoted, two of them were,
23 so I'm not positive whether they used the
24 right terminology. But two ballots were
25 spoiled and revoted, rejected and spoiled,

1 but if -- but I would suggest to you if you
2 look at these ballots, you can see why they
3 were rejected.

4 Number one, on the first one, they've
5 marked, both the Democrat and the Republican
6 party, which would have been overvote or a
7 mistake and they're starting to scratch it
8 out, so the natural thing to do would be say,
9 hey, let's just remake the thing and not --
10 not worry about it. So that's apparently
11 one.

12 And in this particular county and
13 because of this particular type of ballot,
14 they use a felt pen to connect these -- this
15 arrow thing. If you'll look on the US House
16 of Representatives Eighth Congressional
17 District, you'll see -- and they had a lot of
18 bleed-through problems with these ballots in
19 this county. And this you can see, if you
20 turn it over, I think it would appear --
21 there's not a bleed through. You've got a
22 partial mark between these arrows and this,
23 which would have been an overvote, and if it
24 showed to be an overvote, a person would be
25 allowed to say, oh, sorry. I don't know

1 where that mark came from here, so I did --
2 so there are reasons to remake these two,
3 because there's a flaw on them that you can
4 see that somebody might want to remake their
5 ballot for.

6 On the spoiled one, I would suggest
7 that -- I don't know. I mean, I would agree
8 with Mr. Brown, but I don't see any
9 particular flaw in the ballot, but in order
10 to -- you don't have to have a flaw. I mean,
11 for example, on this ballot, it would seem to
12 me that you get through -- there's no
13 straight party vote, so now you're picking,
14 and then you get to one and then you look at
15 it again and you want to change your mind.
16 And it says if you make any mistakes, you can
17 do whatever you -- or you change your mind,
18 you just -- you just ask for a new ballot.
19 It's a not harm/no foul. It's -- it's --
20 it's fairly clear to me, at least at this
21 late hour after a very long day, that when
22 they realized they had voted for Mr. Deig
23 realized that was a serious error and needed
24 a new ballot. Who knows how they voted, but
25 -- so any --

1 MR. CHAIRMAN: Okay.

2 MR. BROOKS: -- in any event, you
3 don't have to have a defective ballot to get
4 a revote. If a voter asks for it, they get
5 one. You don't have to have one. So --

6 MR. CHAIRMAN: Thank you.

7 MR. BROOKS: -- there's really
8 not been any serious reason to --

9 MR. CHAIRMAN: Questions from
10 Commissioners.

11 MR. DURNIL: Do we know what
12 ballot we're looking at?

13 MR. BROOKS: They're the ones
14 attached to -- there's a big spoiled and a
15 big rejected.

16 MR. SKOLNIK: Well, we were just
17 handed a big stack of documents.

18 MR. DURNIL: We've got a stack of
19 those things and it says they're spoiled
20 ballots. I don't know. All these are
21 spoiled?

22 (Off the record - Discussion)

23 MR. CHAIRMAN: Any other
24 questions by Commissioners?

25 MR. BROWN: Mr. Chairman, if I

1 might quickly --

2 MR. CHAIRMAN: Very briefly.

3 MR. BROWN: This Commission has
4 ruled consistently all day that a mistake of
5 a poll worker should not invalidate the vote
6 of an otherwise eligible voter. We have no
7 evidence these ballots were remade. In fact,
8 I disagree that there was even -- especially
9 on the spoiled, but on all three we already
10 know from the back of the poll book they
11 labeled one spoiled and then apparently
12 rejected is what Mr. Brooks is saying, so we
13 know there was a mistake already. And at the
14 risk of disenfranchising these three voters,
15 I would ask for consistency in the
16 Commission's rulings that we not
17 disenfranchise these three voters due to a
18 mistake of the poll workers. Thank you.

19 MR. BROOKS: I'm happy to see,
20 Mr. Chairman, that we're finally on the
21 Democrat side trying to enfranchise voters.
22 It's very encouraging. But the problem with
23 that is, that, A, they've told -- the -- the
24 board has told you there were two remade, so
25 there were two, whether they call them

1 spoiled or whatever; we know -- we know that.
2 And this whole idea of disenfranchising the
3 ballot and the spoiled one, how about the
4 idea that it was remade like it should have
5 been and now because it's -- it's apparently
6 a Deig vote, Mr. Brown would like to have him
7 vote twice. I mean, what's supposed to
8 happen, it goes in the spoiled and they're
9 supposed to remake another ballot --

10 MR. CHAIRMAN: Okay.

11 MR. BROOKS: -- and so now he
12 wants --

13 MR. CHAIRMAN. Got it. Got it.
14 Got it. Got it. Got it.

15 MR. BROOKS: -- wants it voted
16 twice.

17 MR. CHAIRMAN: Questions from
18 Commissioners.

19 Hearing none.

20 Discussion or motions.

21 MR. DURNIL: Since the Election
22 Board told us that they -- they remade two
23 ballots and revoted them, then we have to
24 take -- take their word for that and not
25 count these two ballots, not to revote these

1 two ballots.

2 MR. CHAIRMAN: A motion has been
3 made.

4 I second.

5 Discussion.

6 MR. KUZMAN: Yes, for
7 clarification.

8 There are -- are there three spoiled
9 ballots but they only account for two of them
10 on their -- on the --

11 MR. CHAIRMAN: Are there three or
12 two ballots you're talking about?

13 MR. BROWN: There's two -- two
14 labeled rejected, one labeled spoiled and
15 only a notation for two ballots in the back
16 of the poll book.

17 MR. DURNIL: And two were
18 revoted.

19 MR. CHAIRMAN: Which two were
20 revoted?

21 Mr. Brooks.

22 MR. BROOKS: We have two things
23 going on here. One is, they put them in
24 these envelopes which are labeled, which is
25 -- which is what you're supposed to do when

1 you remade a ballot. So you've got a
2 notation for two of them, but all three are
3 accounted for by being in an envelope that
4 means that particular ballot shouldn't be
5 voted and presumably was voted already.

6 MR. CHAIRMAN: Questions from
7 Commissioners.

8 Discussion.

9 MR. KUZMAN: I have a question
10 maybe for the attorneys.

11 When you spoil a ballot, are you
12 supposed to do anything more than put it in
13 -- in an envelope or anything, cross them
14 out, crinkle them up? I don't know.

15 MR. CHAIRMAN: Counsel.

16 MR. KING: Mr. Chairman and
17 members of the Commission, there's a
18 requirement which I'll give you the citation
19 for --

20 MR. KUZMAN: Okay.

21 MR. KING: -- shortly that
22 requires documentation on the -- on the
23 ballot that it's been spoiled.

24 MR. CHAIRMAN: Counsel.

25 MS. BARNES: Correct. I would

1 agree first time tonight.

2 MR. CHAIRMAN: Good.

3 MR. KUZMAN: For that -- for that
4 reason there's no notification on any of
5 these ballots that they're spoiled and, plus,
6 there is two but we have three.

7 MR. CHAIRMAN: You're saying
8 there's three in the envelope?

9 MR. KUZMAN: Well, there's --
10 there's -- on the back of the -- Mr. Brooks
11 put it on the back of the voter poll book.
12 There are two absentee ballots spoiled and
13 revoted, but we have three that were spoiled
14 or revoted. I don't know why -- where is the
15 other one accounted for or not. I'm -- I'm
16 lost.

17 MR. CHAIRMAN: Okay.

18 Any other questions or comments?

19 No other questions.

20 MR. KUZMAN: And, plus, I'm
21 not --

22 MR. CHAIRMAN: They're spoiled
23 ballots.

24 MS. BARNES: There's a difference
25 between spoiled and rejected.

1 MR. KUZMAN: Okay. What is the
2 difference between rejected and spoiled, if
3 you don't mind me --

4 MR. CHAIRMAN: Counsel.

5 MS. BARNES: Thank you,
6 Mr. Chairman.

7 Mr. King and I addressed the state law
8 for spoiled ballots requires a poll worker to
9 mark on the ballot that it has been spoiled,
10 but for the rejected ballots, the statute is
11 on page 303 and it goes over to page 304, and
12 that says: If an inspector rejects a ballot,
13 the designation and the reason why the ballot
14 is rejected is to be noted on the ballot or
15 the absentee envelope if it's an absentee
16 ballot. And, again, these were placed in
17 envelopes. We don't know if the County
18 Election Board placed them in envelopes after
19 the election. We don't know if poll workers
20 placed them in these envelopes. These
21 envelopes are -- are, again, something
22 perhaps that the county came up with.

23 MR. CHAIRMAN: Okay.

24 Counsel, Mr. King, do you have anything
25 to add to that?

1 MR. KING: Yes, Mr. --

2 Mr. Chairman.

3 Indiana Code 3-11-1118 on page 314 sets
4 forth for a rule with regard to paper
5 ballots, which I believe is applicable to
6 optical-scanned ballots as well. I'll double
7 check that. At the bottom of page 314, it
8 reads: A voter who by accident or mistake
9 spoils, defaces or mutilates the voter's
10 ballot may, by returning the ballot to the
11 poll clerks and proving that it was not
12 intentionally spoiled, receive another
13 ballot. The poll clerks make a -- the poll
14 clerks shall make a record of the fact on the
15 poll list and the ballot shall then be marked
16 void by the Precinct Election Board in the
17 presence of the voter.

18 MR. CHAIRMAN: And return it with
19 the other election materials.

20 MR. KING: And return it with the
21 other election materials.

22 MR. CHAIRMAN: And if -- and that
23 didn't occur here.

24 MR. KING: Part of it did not
25 occur here according to at least the exhibit

1 presented, which notes that it was --
2 indicates it was noted in the poll book.
3 It's not clear that the -- the poll clerks
4 acted in accordance with the requirements of
5 this section by marking the ballot void.

6 MR. CHAIRMAN: What would be the
7 remedy in such a case where the ballot wasn't
8 marked void? Is there anything to do with
9 that or accept it --

10 MR. KING: I think --

11 MR. CHAIRMAN: -- as a mistake
12 or what?

13 MR. KING: I think the argument
14 would be that, one, it would be a failure to
15 comply with the requirements of the statute,
16 but that would be an error by the precinct
17 election official as opposed to the voter.

18 MR. CHAIRMAN: Okay.

19 Counsel. Counsel, do you have anything
20 to add to that?

21 MS. BARNES: No. Once again I
22 would agree.

23 MR. CHAIRMAN: Okay.

24 Commission members, discussion.

25 Motions.

1 MR. DURNIL: If the Election
2 Board indicated that these ballots have been
3 revoted, we would be counting them twice if
4 we count them, so I would say we honor the
5 decision of the County Election Board.

6 MR. CHAIRMAN: All in favor say,
7 "Aye."

8 MR. DURNIL: Aye.

9 MR. CHAIRMAN: Aye.

10 MR. CHAIRMAN: All opposed?

11 MR. BROWN: Aye.

12 MR. CHAIRMAN: Motion carries two
13 to one.

14 Mr. Brown.

15 MR. BROWN: Mr. Chairman,
16 Mr. Durnil's motion was -- was in regard to
17 two ballots. Was there a motion on the
18 third?

19 MR. DURNIL: The rejected ballot?

20 MR. CHAIRMAN: Rejected, yeah.

21 MR. DURNIL: I would -- I would
22 move that we reject that. If we don't have
23 it here to look at, I would move that we
24 honor the County Election Board's decision.

25 MR. CHAIRMAN: Second.

1 Discussion.

2 MR. KUZMAN: Do we have it here
3 if it's rejected?

4 MR. BROWN: We had -- we had two
5 rejected, which Mr. Brooks linked with the
6 back of the poll book. We have one spoiled
7 ballot that I just -- that was -- that's
8 there in front -- I'm sorry. I --

9 MR. CHAIRMAN: I thought it was
10 the other way around.

11 Mr. Brooks.

12 MR. BROOKS: Well, I -- I -- I
13 think they probably just used wrong
14 terminology on the two. Those are in there
15 that were rejected. But the other one, what
16 you're really honoring is the worker at the
17 poll's decision to put that in the spoiled
18 envelope, and one, I think, can assume they
19 did that for a reason and I think we should
20 assume an appropriate reason, and, again, the
21 risk, as Mr. Durnil pointed out, is that
22 you're going to let somebody vote twice. I
23 mean, you have to assume the -- the poll
24 worker didn't put it in there for any reason,
25 any valid reason and we think the assumption

1 should be that it wasn't for a valid reason.

2 MR. CHAIRMAN: Motions.

3 MR. DURNIL: I move we reject it.

4 MR. CHAIRMAN: Second.

5 Discussion.

6 Hearing none.

7 All in favor of Mr. Durnil's motion?

8 MR. DURNIL: Aye.

9 MR. CHAIRMAN: Aye.

10 Opposed?

11 MR. KUZMAN: Aye.

12 MR. CHAIRMAN: Motion carries two
13 to one.

14 Mr. Brown.

15 MR. BROWN: Thank you,
16 Mr. Chairman.

17 I would now direct your attention --
18 this is going to be my last dispute.

19 MR. SKOLNIK: I'm sorry. Is
20 there another -- do you have another --

21 MR. BROWN: Yes.

22 MR. SKOLNIK: -- dispute with
23 this precinct?

24 MR. BROWN: Yes.

25 MR. SKOLNIK: Okay.

1 MR. BROWN: On page 61 of the
2 poll book, there was two voters -- it's two
3 voters with the last names W-A-T-H-E-N and
4 I'll show opposing counsel. We have
5 affidavits that the address listed in the
6 poll book that that is where they reside.
7 They have personal knowledge of the matters.
8 And then they reviewed attached maps per the
9 Posey -- or Gibson County GIS data which
10 shows that these two voters do not reside
11 within House District 76.

12 MR. CHAIRMAN: Interesting.

13 MR. BROWN: There's also a map
14 with certification from the election division
15 of the precinct in question in Gibson County,
16 and I'd like to also make that an exhibit.

17 MR. CHAIRMAN: Okay. Why don't
18 you bring them up.

19 MR. BROWN: The final exhibit is
20 the Gibson County website where you'll see
21 that the surveyor's website is the first
22 page. The second page is, once you click the
23 link on the Gibson County GIS, it takes you
24 to a beacon which has the contract for their
25 GIS, which is the -- which -- from which the

1 documents show the maps where the voters are
2 not located in the district.

3 MR. SKOLNIK: Mr. Chairman, I've
4 just been handed exhibits P19 and P20.

5 MR. BROWN: Mr. Chairman, there
6 are smaller maps attached to the affidavits
7 which will allow you to locate on the larger
8 map that above the -- I believe it's 700
9 South is the road at the top -- and I can
10 come point out to the map for the Commission
11 where it corresponds -- the smaller GIS
12 beacon map.

13 As you go to the beacon GIS website,
14 you'll see in those smaller attached maps,
15 they actually list the precincts in which
16 you're supposed to reside.

17 And the issue is that these two voters
18 did cast votes in House District 76 but do
19 not reside in House District 76, and so we
20 would urge that the Recount Commission grant
21 a special election in this precinct to
22 determine which candidate rightfully should
23 be elected to office. Thank you.

24 MR. CHAIRMAN: Thank you.

25 Counsel.

1 MR. BROOKS: Well, this is a
2 little surprise to us, Mr. Chairman. I would
3 submit to you that if they are in Montgomery
4 2, which is where they're registered and
5 Montgomery 2 is in House District 76, which
6 it is, that the affidavits from these people
7 citing that they don't -- they don't live in
8 House District 76 is insufficient to overcome
9 the fact that they're obviously registered in
10 Montgomery 2, and Montgomery 2 is in -- in
11 the precinct, in House District 76. I mean,
12 it's -- it's always interesting to me that --
13 I mean, especially right before we head into
14 the Charlie White thing -- I assume you guys
15 will be turning these two voters over for
16 voter fraud to the special prosecutor because
17 they've now voted fraudulently and they're
18 not proud enough to come in here with an
19 affidavit saying they did. But at the end of
20 the day, I think you have registered voters
21 Montgomery 2 was in and now we're showing up
22 with maps and affidavits. These are
23 certainly not enough -- they -- they would
24 need, I think, somebody from -- with a little
25 more authoritative knowledge than -- than

1 these people and what's in and out of the
2 precinct before we start again going into the
3 computer and trying to figure out who they
4 voted for and making adjustments.

5 MR. CHAIRMAN: Okay.

6 Questions from Commissioners.

7 MR. SKOLNIK: Before we have that
8 -- pardon the interruption -- Exhibits P21
9 through 24 have been submitted by Mr. Brown.

10 MR. BROOKS: I mean, I would -- I
11 mean, we've -- we've had missing ballots;
12 we've had at least several that we knew were
13 votes for McNamara there disappeared and now
14 we're going to -- this is just another little
15 bit of bad luck they're in. If they aren't
16 in, they've already voted; they've already
17 been counted for whatever. People -- we
18 don't know whose ballots were -- were
19 missing. They've been disenfranchised in the
20 process by accident and there's not enough
21 authority to override this.

22 MR. CHAIRMAN: Counsel for -- for
23 the Commission, are there any points of law
24 that either of you would like to bring up in
25 this regard?

1 MR. KING: Mr. Chairman, I'll --
2 I'll repeat the argument that, again, a
3 special election is beyond the authority of
4 the Commission to grant in a recount
5 proceeding.

6 If it's permissible, I'd also like to
7 state for the record the Petitioner has
8 represented that the maps and material were
9 certified by the Election Division. I do not
10 dispute the accuracy of the material, but I
11 want to make it clear that neither the
12 Democrat nor Republican and co-director to
13 the Election Division have, to my knowledge,
14 certified the materials submitted.

15 MR. CHAIRMAN: Thank you.

16 Counsel, do you have anything to add?

17 MS. BARNES: No. I have nothing
18 to add.

19 MR. CHAIRMAN: Commissioners,
20 questions, motions, discussion.

21 MR. DURNIL: I would move we deny
22 the request for a special election.

23 MR. CHAIRMAN: Second.

24 Discussion.

25 Hearing none.

1 All in favor?

2 MR. DURNIL: Aye.

3 MR. CHAIRMAN: Aye.

4 Opposed?

5 MR. KUZMAN: Aye.

6 MR. CHAIRMAN: Motion carries two
7 to one.

8 Mr. Brown.

9 MR. BROWN: No further disputes
10 in this precinct. Thank you.

11 MR. CHAIRMAN: Mr. Brooks,
12 anything for this precinct? Would you like
13 to withdraw anything?

14 MR. BROOKS: Everything we had is
15 withdrawn.

16 MR. CHAIRMAN: Mr. Skolnik.

17 MR. BROOKS: Well, in this
18 precinct?

19 MR. CHAIRMAN: In this precinct.

20 MR. BROOKS: Yeah.

21 MR. SKOLNIK: Mr. Chairman, the
22 tally in Montgomery 2 in Gibson County
23 reflects 68 votes for Mr. Deig, 91 for
24 Ms. McNamara. There were three invalid
25 ballots tallied by the State Board of

1 Accounts for Mr. Deig and there were two no
2 votes.

3 MR. CHAIRMAN: Motion.

4 MR. DURNIL: I move we accept the
5 tally as final.

6 MR. CHAIRMAN: Second.

7 All in favor?

8 MR. DURNIL: Aye.

9 MR. CHAIRMAN: Aye.

10 Opposed?

11 MR. KUZMAN: Aye.

12 MR. CHAIRMAN: Motion carries two
13 to one.

14 Mr. Skolnik.

15 MR. SKOLNIK: Mr. Chairman,
16 normally at this point we would proceed to
17 allow the Respondent to present its case in
18 chief, and I will note for the record there
19 are two precincts in which Respondent
20 reserved the right to present evidence on any
21 disputed ballots or -- or other disputed
22 matters. It's Robb Number 1 within Posey
23 County and Ward 6, precinct 13 within
24 Vanderburgh County. I will note, however,
25 that -- and I obviously defer to the